STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES E. WILSON,

Defendant-Appellant.

UNPUBLISHED
April 26, 2007

No. 268808
Wayne Circuit Court
LC No. 05-009595-01

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant was charged with first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, he was convicted of second-degree murder, MCL 750.317, and felony-firearm. He was sentenced to a prison term of 20 to 40 years for the murder conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first challenges the sufficiency of the evidence as it relates to his murder conviction. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). Second-degree murder is a general intent crime, which requires proof of malice. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Goecke, supra* at 464. Malice may be inferred from all the facts and circumstances of the killing, *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), including the use of a deadly weapon, *People v Turner*, 213 Mich App 558, 567; 540

NW2d 728 (1995), and evidence that the defendant "intentionally set in motion a force likely to cause death or great bodily harm," *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998). "The general intent to kill need not be directed at an identified individual or the eventual victim." *Abraham, supra* at 270.

The elements that must be proved to convict a defendant as an aider and abettor are "(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." *Turner, supra* at 568. The prosecutor must prove "that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew that the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense." *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006). "The term 'aiding and abetting' includes all forms of assistance. The term comprehends 'all words or deeds which may support, encourage, or incite the commission of the crime.' The amount of aid or advice is immaterial so long as it had the effect of inducing the crime." *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982), overruled in part on other grounds in *People v Perry*, 460 Mich 55, 64-65; 594 NW2d 477 (1999) (citations omitted). In other words, "the amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime." *People v Moore*, 470 Mich 56, 71; 679 NW2d 41 (2004). "An aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors which may be considered include a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime." *Turner, supra* at 568-569 (citations omitted).

The evidence showed that Vincent Ghivan, Kevin Anderson, and defendant went to a party at a VFW Hall. They were armed with guns and stored them outside, behind the hall. After they were ejected for fighting, they went immediately for the guns. Ghivan got his .45-caliber gun first and ran out front, followed by defendant and Anderson. Ghivan testified that defendant and Anderson had between them a .9-mm gun and a .25-caliber gun. He heard two different guns shooting from behind him and to the side, and both .9-mm and .25-caliber casings were recovered from the scene. Ghivan testified that when he heard those guns firing, he began firing his .45-caliber gun. Keith Reed testified that all the shots were fired in the direction of the car where he and his friends were and that he and his friends were not armed apart from Jarrell Logan's gun, which was inoperable. Ghivan agreed that no one from Reed's group was firing a gun. The medical examiner determined that Logan died of multiple gunshot wounds. Evidence that defendant fired a gun in the direction of others supports an inference of malice. Further, the jury could infer that defendant's shooting at the Reed group incited Ghivan to fire at the group. This evidence was sufficient to prove that if defendant did not cause Logan's death himself, he aided and abetted in the killing. Thus, the evidence was sufficient to support defendant's conviction of second-degree murder.

Defendant next argues that he was denied a fair trial due to judicial misconduct. Defendant failed to preserve this issue by objecting below. An unpreserved challenge to a trial court's conduct is reviewed for plain error affecting a defendant's substantial rights. *People v*

Carines, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Conley*, 270 Mich App 301, 305; 715 NW2d 377 (2006).

Nonetheless, having reviewed the record, we conclude that the court's questions to certain witnesses and its control of the proceedings did not exceed the wide latitude afforded a court in a bench trial. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995); *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986); *People v Meatte*, 98 Mich App 74, 78; 296 NW2d 190 (1980). Further, because this was a bench trial, "concern over the effect of the judge's comments and conduct did not exist." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992). "Nevertheless, a judge's comments and conduct can indicate a possible bias" and will warrant relief on appeal "when a litigant can show that the trial judge's views controlled [her] decision-making process." *Id*. Defendant has made no such showing here.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood